

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REMCODA, LLC,

Plaintiff,

-v-

DAVID SUMNER,
SUMNER GROUP HEALTH LTD.,
ENCORP SWITZERLAND AG,

Defendants.

22 Civ. 770 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has received plaintiff's response, at Dkt. 50, to its order to show cause, Dkt. 49. In its response, plaintiff argues that the defendants in this action are alleged to be foreign citizens, that Rule 4(m) generally requires that defendants must be served within 90 days of filing the complaint, but that, for foreign defendants, courts use a flexible due diligence standard in determining whether service was timely. Dkt. 49 (citing *Astor Chocolate Corp. v. Elite Gold Ltd.*, 510 F. Supp. 3d 108, 123 (S.D.N.Y. 2020)). This exception, however, "does not apply if . . . the plaintiff did not attempt to serve the defendant [that resides] in the foreign country." *Astor Chocolate*, 510 F. Supp. 3d at 123 (alterations in *Astor Chocolate*). Until filing its response, plaintiff had not made a showing of such attempts. See Dkt. 49 Exs. A–E.

The Court finds that plaintiff has attempted service on all three defendants, that the exception to Rule 4(m) applies, and that plaintiff has made a sufficient showing of due diligence. The Court directs plaintiff, by July 15, 2022, to file a letter providing a status update as to plaintiff's efforts to serve, should service of all three defendants not have been effected by then.

SO ORDERED.

A handwritten signature in cursive script, reading "Paul A. Engelmayer".

PAUL A. ENGELMAYER
United States District Judge

Dated: May 18, 2022
New York, New York